

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WELLS FARGO TRUST COMPANY,
NATIONAL ASSOCIATION, formerly known
as WELLS FARGO BANK NORTHWEST,
N.A., in its capacity as Trustee of the Waste
MGT (Seattle) CTL Pass-Through Trust U/D/T
dated as of April 21, 2014,

Plaintiff,

v.

JONATHAN K. MARKOFF,

Defendant.

CASE NO. C17-1862-JCC

ORDER

This matter comes before the Court on Plaintiff's motion to compel and for attorney fees (Dkt. No. 38). Having thoroughly considered the briefing, the relevant record, the Court finds oral argument unnecessary and hereby DENIES Plaintiff's motion to compel as moot and GRANTS Plaintiffs request for attorney fees for the reasons explained herein.

I. BACKGROUND

Plaintiff filed this action against Defendant for damages arising from defaults on two loans, pursuant to Defendant's personal guaranty. (Dkt. No. 1 at 9–10.) On January 22, 2019, Plaintiff filed a motion to compel after Defendant failed to provide his 2014 and 2015 tax returns in discovery. (Dkt. No. 38 at 17–18.) Defendant did not respond to Plaintiff's motion, but

1 produced his tax returns on February 9, 2019. (Dkt. No. 40 at 2.)

2 Plaintiff's motion to compel also seeks attorney fees for having to file its motion to
3 compel. (Dkt. No. 38 at 14.) Because Defendant has since produced his tax returns, the only
4 issue before the Court is Plaintiff's request for \$7,128 in attorney fees. (Dkt. No. 40 at 2.)
5 Defendant has not opposed Plaintiff's fee request. (*Id.*)

6 **II. DISCUSSION**

7 The Federal Rules of Civil Procedure require courts to award attorney fees to reimburse a
8 party for their reasonable expenses incurred when preparing a motion to compel:

9 If the motion is granted—or if the disclosure or requested discovery is provided
10 after the motion was filed—the court must, after giving an opportunity to be heard,
11 require the party or deponent whose conduct necessitated the motion, the party or
12 attorney advising that conduct, or both to pay the movant's reasonable expenses
incurred in making the motion, including attorney's fees. But the court must not
order this payment if:

- 13 (i) the movant filed the motion before attempting in good faith to obtain the
disclosure or discovery without court action;
- 14 (ii) the opposing party's nondisclosure, response, or objection was
substantially justified; or
- 15 (iii) other circumstances make an award of expenses unjust.

16 Fed. R. Civ. P. 37(a)(5). Here, Plaintiff is entitled to attorney fees because Defendant did not
17 disclose his tax returns until after Plaintiff filed its motion to compel. *Id.* Plaintiff attempted in
18 good faith to obtain the documents without the Court's involvement, as demonstrated through its
19 discovery requests and emails with opposing counsel. (*See* Dkt. Nos. 39-2 at 5, 39-1); *see, e.g.,*
20 *Walt Disney Co. v. DeFabiis*, 168 F.R.D. 281, 284 (C.D. Cal. 1996) (holding an award of
21 attorney fees was proper because the movant, in good faith, "made several attempts to obtain
22 complete responses [] to the disputed interrogatories, but such attempts were to no avail").
23 Further, Defendant has provided no evidence demonstrating that he was substantially justified in
24 his nondisclosure, or that an award of fees related to the motion to compel is unjust. (Dkt. No. 40
25 at 2); Fed. R. Civ. P. 37(a)(5)(i)–(iii).

26 Given Defendant's production of the tax returns, Plaintiff's request for the returns in its

1 motion to compel is now MOOT. Plaintiff now requests \$7,128 in attorney fees related to the
2 motion to compel.¹ (Dkt. No. 40 at 2.) Plaintiff's supporting Declaration outlines its actual costs
3 in preparing and filing the motion to compel, (Dkt. No. 39 at 3), and the Court FINDS the costs
4 are reasonable.

5 **III. CONCLUSION**

6 For the foregoing reasons, Plaintiff's motion to compel the Defendant's tax returns is
7 DENIED as moot and Plaintiff's request for attorney fees incurred in preparing its motion to
8 compel (Dkt. No. 40) is GRANTED. Defendant is ORDERED to pay Plaintiff \$7,128.

9 DATED this 22nd day of February 2019.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

¹ Plaintiff's counsel emphasizes that this award is sought from Defendant and is not intended as a sanction against Defendant's counsel. (Dkt. No. 40 at 2.)